

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1798 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
VIKRAMSINH MULRAJSINH JADEJA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YS MANKAD for Petitioner

Mr.Garaniya Asst. Government Pleader for Respondent No. 1

MR HS MUNSHAW for Respondent No. 3

-----  
CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 4/09/98

ORAL JUDGEMENT

Rule. Mr.Munshaw & Mr.Gharaniya wavier notice rule.

2. The petitioner Vikramsinh Mulrajsinh Jadeja came to be elected as Sarpanch of Ratadia Gram Panchayat of Mudra Taluka of Kutch District. While he was in his office information came to be lodged with Mudra Police

Station on 10.8.97 that about 4 days prior thereto i.e. on 6.8.97 he committed certain acts which could be considered as criminal acts punishable under Section 323, 504, 506(2) and 114 of the Indian Penal Code as well as Section 3(1) clause x of the Schedule Castes & Schedule Tribes (Prevention of Atrocities Act). The Police registered the offence and filed chargesheet. On the basis of this allegation against the petitioner the District Development Officer gave a notice to the petitioner on 4.9.97 to show-cause why action under Section 59(1) of the Gujarat Panchayat Act, 1993 may not be initiated against him. The petitioner tendered his reply and explained that the complaint is outcome of political rivalry with the employer of the complainant i.e. Dilawarsinh Bapubhai Jadeja. He also explained that the complaint is concocted and is given after about 5 days from the date of alleged incident. The guilt is yet to be proved and therefore the notice may be discharged. The District Development Officer after hearing the parties came to a conclusion on 30.12.97 that the case of the petitioner attracted the provisions of Section 59(1) of the Panchayat Act as he was involved in offence involving moral turpitude and acts not befitting the office of the Sarpanch and ultimately passed the impugned order suspending the petitioner.

The said order was challenged in revision before Additional Development Commissioner and the Additional Development commissioner after hearing the parties came to a conclusion on 19.2.98 that the order passed by the District Development Officer was legal and proper and there was no need to interfere. The revision of the petitioner was dismissed.

3. The petitioner has therefore approached this Court by present petition stating that the orders in question are improper and unconstitutional and ultra vires; that the order is passed without considering the aspect that the authority passing the order is required to examine the correctness or otherwise of the complaint while passing the order. The section has used word "may" which gives discretion to the authority which is not supposed to be used mechanically.

4. Heard Mr.Y.S.Mankad, Learned Advocate for the petitioner, Mr.H.S.Munshaw, Learned Advocate for respondent no.3 and Mr.Gharaniya Learned AGP for respondent no.1 & 2. The main bone of contention of Mr.Mankad is that both the authorities below have not used the discretion vested in them by the provisions of Section 59(1) of the Panchayat Act and have acted

mechanically considering that because the complaint is filed involving the petitioner in offences, he is required to be suspended. Attention of this court is drawn towards the decision of a Division Bench of this High Court in the case of Velji Kanthad Humbal Versus State of Gujarat in Special Civil Application No.7171 of 1997 delivered on 26.12.97 (Coram : Mr.K.Shreedharan, CJ and Mr.M.S.Shah, J) wherein it is held that although the provisions of Section 59(1) is intra vires the use of word "may" in the said provision confers discretion on the authority and therefore, institution of criminal proceedings for an offence involving moral turpitude does not per se result into suspension of the sarpanch/upsarpanch, otherwise the hearing contemplated within the ambit of principles of natural justice as impliedly read into the provisions of Section 59(1) of the Act, would be confined to decision of only two questions (i) whether the Sarpanch/Upsarpanch is the same person who is an accused in the concerned crime and (ii) whether the offence involves moral turpitude. It was further observed that in the view of their Lordships the hearing implied in Section 59(1) of the Act encompasses somewhat wider area than consideration of the above two limited questions.

4.1. It is true that the District Development Officer is not to take over the role of Criminal Court nor do we intend to dilute the efficacy of the power of suspension which power should not be merely be available but also must be exercised in appropriate case.

5. Reliance was also placed on the decision in the case of Narabhai V Chaudhary V. R.S.Vaghela reported in XXXVIII GLR Pg.599, wherein it is observed that a Sarpanch cannot be suspended just because of institution of criminal case. As to the question Whether an act constitutes an offence of moral turpitude, there cannot be a strait-jacket formula. It depends on various factors including the manner and circumstances in which the offence is alleged to have been committed. Mr.Mankad therefore urged that the impugned order of the Additional Development Commissioner may be quashed & petitioner may be directed to be reinstated as Sarpanch cancelling the suspension order.

6. Mr.H.S.Munshaw, Learned Advocate appearing for respondent no.3 has opposed this petition. He has placed reliance on a decision of this High Court in the case of Bhogilal V. Development Commissioner of State reported in XVII GLR Page 724. He has contended that in that decision the Sarpanch alleged to have been involved in

offence punishable under Section 427, 447, 504 of the IPC besides Section 51(1) and 161 of IPC and it was held therein that the involvement of the petitioner in such an offence would necessarily attract the provision of Section 51(1) of the Gujarat Panchayat Act, 1961 which provisions is similar to Section 59 (1) of the Gujarat Panchayat Act, 1993. He therefore urged that being a Sarpanch, it is expected and a person holding that office to behave in a particular manner which can be model for the society. The petitioner has behaved in a manner not befitting his office and therefore the order of suspension is appropriately passed. There is no need for any interference.

7. While going through the impugned orders it is amply clear that the authorities were deeply impressed by the factum of the petitioner having been involved in offence under the provisions of Schedule Castes and Schedule Tribes (Prevention of Adulteration Act) and observed that, that act was unbecoming of a person sitting in public office.

8. At this stage it would not be proper for this court to enter into the merits of the complaint but it has to be observed that the authorities were exercising the powers under Section 59(1) of the Panchayat Act are expected to look into the contents of the complaint and be satisfied atleast prima facie about the genuineness of the complaint. It is also expected that the authority while considering the question has to examine whether the act constitutes an offence of moral turpitude. While going through the order it is found that the authorities concerned have only observed that an information is lodged against the petitioner and the Police has filed chargesheet involving the petitioner in the offence and therefore came to the conclusion that the petitioner has acted in manner not befitting his office. Whether the offence alleged to have been committed by the petitioner involves moral turpitude or not is not considered by the authorities in question in the impugned order.

9. It was argued by Mr. Munshaw that the decision in the case of Patel Bhogilal Manhardas (Supra) would directly applicable to the facts of the present case as in that case also provisions of Section 504 of IPC were also alleged to have been attracted besides other provisions and in the instant case also the said provisions besides other sections of IPC and Atrocity Act are alleged to have been involved in the incident. For deciding whether an act is of moral turpitude or not the guidelines as laid down by this Court in the case of

Balubhai Amidar Christi Vs. State of Gujarat as reported in 19 GLR 535 may be considered. It was observed therein that moral turpitude inculcates baseness or disintegrity. It must be a conduct involving infringement of moral sentiments of the community and shock its conscience. Any society has to take into consideration as to whether a certain activity would shock the conscience and legal position must coincide with the moral position.

10. In the case of Patel Bhogilal the Sarpanch had permitted our cattle to graze and on being opposed had used abusive language which was considered as an act sufficient to attract provision of Section 51(1) of the Old Panchayat Act (Sec.59(1) of Gujarat Panchayat Act, 1993). However, keeping in view the decision later on delivered in the case of Babulal Christi the question needs to be reconsidered in the light of the facts of each case and changes that has come in the society, its values and ethos. In the case of Ramjibhai Morarbhai Patel decided by the single judge (Coram : S.D.Shah, J) this very question was considered. In that case the petitioner was found to be involved in act of playing mischief in holding elections which was seriously viewed. However, the decision of a Division Bench which has come later in point of time makes it amply clear that the authority has to take into consideration all these various aspects while exercising its discretion. The decision either in the case of Patel Bhogilal or Babulal Christi does not lay down a straight jacket formula and each act has to be individually considered. It is only than that a discretion can be said to have been properly exercised. The Authority below have not taken into consideration these aspects and has not considered the defence also. In the result this Court is of a view that the order challenged in this petition are not sustainable and they deserved to be quashed. The petition is therefore allowed. Order of Additional Development Commissioner passed on 19.2.98 challenged herein is quashed and rule is made absolute. Direct Service permitted.

\*\*\*\*\*